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11.04.2022
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**In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

W.P.A 15890 of 2021

**Md. Abdul Kuddus
-versus
State of West Bengal & Ors.**

**Mr. Md. Rizwan Alam.
...For the Petitioner.**

**Mr. Pinaki Dhole,
Ms. Kakali Samajpati.
...For the State.**

Affidavit-of-service filed in Court today is taken on record.

The petitioner claims to be an organizer teacher of Harharia Junior High Madrasah. The DLIT report contains the name of the petitioner and his date of appointment is mentioned as 20th September, 2007.

The Madrasah was recognized as a Madhyamik Siksha Kendra with effect from 1st February, 2011. There was only one sanctioned post in the language group. As there were two teachers in the language group, according to the policy of the Government, the senior most teacher was granted recognition. The said teacher thereafter resigned from the post in question.

The petitioner being second in line seeks approval of his service as there is a vacancy available for appointment in the said Madhyamik Siksha Kendra.

An affidavit has been filed on behalf of the Directorate of Madrasah Education wherein it has been

mentioned that there was no express Government Order or government policy in existence in the year 2015 and even at present for filling up vacant post in Madhyamik Siksha Kendra under the Minority Affairs and Madrasah Education Department by approval of the existing staff for the second time. The petitioner is an existing staff and he cannot be treated as an organizer staff at this position of time. The organizing staff in the language group had already been appointed. After his resignation the petitioner cannot be treated as an organizing staff.

Since there was only one vacant post, the senior most organizing teacher of the subject group was granted approval.

The petitioner is aggrieved by the same.

According to the petitioner, as there is already a vacancy and the petitioner is serving in the said post since 2007, accordingly, his appointment ought to be approved by the Government.

The prayer of the petitioner has been opposed by the State Government.

Admittedly, no law has been shown before this Court which permits approval of organizer teacher who was present on the date of recognition of the Madhyamik Siksha Kendra and whose service could not have been approved, as there was only one vacancy.

Learned advocate appearing for the petitioner prays for a direction upon the State respondents to take immediate steps for filling up the vacancy.

It is settled law that it is for the employer to take a decision as to when the vacancy is to be filled up and the procedure to be adopted for filling up the vacancy.

It is not for the Court to pass a mandate upon the employer to take steps for filling up the vacancies.

At this stage, the petitioner cannot claim the benefit of an organizer teacher. He happens to be an existing teacher of the Madrasah and in the event a regular selection process is held the petitioner may at best participate in the selection process along with other eligible candidates, if he is otherwise eligible.

The petitioner however, has not made any prayer for participating in the regular selection process.

In view of the above, no relief can be granted to the petitioner in the present writ petition.

The writ petition fails and is hereby dismissed.

Urgent certified photo copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)